

Thomas T. Bassett (MT 3661)
tom.bassett@klgates.com
K&L Gates LLP
618 West Riverside Avenue, Suite 300
Spokane, WA 99201-5102
Telephone: (509) 241-1538
Facsimile: (509) 232-2117

Counsel for defendant
Cabela's Wholesale, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION

CASEY BENDURE,

Case No.

Plaintiff,

v.

NOTICE OF REMOVAL

STAR TARGETS, JUSTIN
HARDY, TLD INDUSTRIES
LLC, and CABELA'S
WHOLESALE, INC.,

Defendants.

TLD INDUSTRIES LLC,

Third-Party Plaintiff,

v.

ROLLING THUNDER
PYROTECHNIC, CORP. and
MACCRAFT USA,

Third-Party Defendants.

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendant Cabela's Wholesale, Inc. ("Cabela's") hereby files this Notice of Removal, removing the above-captioned case from the Montana Thirteenth Judicial District Court of Yellowstone County, Montana to the United States District Court for the District of Montana, and in support thereof, states as follows:

Statement of Removal

1. On or about June 6, 2014, plaintiff Casey Bendure ("Plaintiff") filed an amended complaint ("Complaint") in the Montana Thirteenth Judicial District Court of Yellowstone County, Montana in an action that has been indexed at DV 14-0749.
2. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Complaint is attached hereto and incorporated herein as Exhibit A.
3. On or about June 10, 2014, Plaintiff served a copy of the Complaint on Cabela's.
4. On June 30, 2014, Cabela's filed an answer to the Complaint in the Montana Thirteenth Judicial District Court of Yellowstone County, Montana.

5. Pursuant to 28 U.S.C. § 1441(a), removal of an action originally filed in state court is proper in “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.”

6. Additionally, 28 U.S.C. § 1332(a) provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States.”

7. Because this case involves a claim in excess of \$75,000 between citizens of different states, it lies within the original subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a).

Diversity of Citizenship

8. There is complete diversity between Plaintiff and the defendants.

9. As alleged in the Complaint and upon information and belief, Plaintiff is a citizen of Montana. Compl., Ex. A, at ¶ 1.

10. Upon information and belief, defendant Star Targets is simply a brand name and is not a legal entity. As a result, the Court need not consider Star Targets for removal purposes. *See N. Ill. Gas Co. v. Airco Indus. Gases, Div. of Airco, Inc.*, 676 F.2d 270, 272 (7th Cir. 1982) (“Nominal parties ... are disregarded for removal purposes and need not join in the petition”); *See also Hewitt v. City of*

Stanton, 798 F.2d 1230, 1232 (9th Cir. 1986) (“All defendants must join in a removal petition with the exception of nominal parties.”).

11. Upon information and belief, defendant Justin Hardy is an individual who resides in and is a citizen of Utah. As evidenced by the consent form attached hereto and incorporated herein as Exhibit B, Justin Hardy consents to removal of this action.

12. Upon information and belief, defendant TLD Industries LLC (“TLD”) is a Utah limited liability company with its principal place of business located in Utah. Additionally, upon information and belief, all of the members of TLD reside in and are citizens of Utah. As evidenced by the consent form attached hereto and incorporated herein as Exhibit B, TLD consents to removal of this action.

13. Defendant Cabela’s Wholesale, Inc. is a Nebraska corporation with its principal place of business located in Nebraska.

14. TLD has filed an Answer which includes a Third-Party Complaint against MacCraft USA and Rolling Thunder Pyrotechnic Corp. (Answer, Jury Demand and Third-Party Complaint attached hereto as part of Exhibit C.)

15. Pursuant to TLD’s Third-Party Complaint, MacCraft USA has its primary place of business in New Mexico. TLD has advised that MacCraft USA has not yet been served with process in this matter and, therefore, need not consent to removal at this time. *See Destfino v. Reiswig*, 630 F.3d 952, 956 (9th Cir. 2011).

16. Pursuant to TLD’s Third-Party Complaint, Rolling Thunder Pyrotechnic Corp. (“Rolling Thunder”) is a Wisconsin corporation. TLD has advised that Rolling Thunder has not yet been served with process in this matter and, therefore, need not consent to removal at this time. *See Destfino v. Reiswig*, 630 F.3d 952, 956 (9th Cir. 2011).

Amount in Controversy

17. Plaintiff alleges that the accident severed his right index finger and half of his middle finger, shattered the metacarpal bone in his right thumb, and caused flesh wounds and abrasions to his face, chest, hands, arms, and legs. Compl., Ex. A, at ¶ 9.

18. Plaintiff also alleges that as a result of the accident, he was “seriously injured” and “has incurred medical expenses, hospital expenses, wage loss, and other special damages, and will suffer special damages in the future.” *Id.* at ¶ 14.

19. Plaintiff also alleges that as a result of the accident, he “has incurred pain, suffering, loss of enjoyment of his established course of life, and other general damages, and will suffer general damages in the future.” *Id.* at ¶ 15.

20. In short, a fair reading of the Complaint demonstrates that the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

21. Therefore, upon information and belief, the amount in controversy requirement is satisfied.

Removal Procedures

22. Because this Notice of Removal is being filed by Cabela's within thirty (30) days of when it was served with the Complaint and within one (1) year of the commencement of the above-captioned action, the requirements of 28 U.S.C. § 1446(b) have been met.

23. As set forth above:

- (a) This Notice of Removal is timely.
- (b) This Notice of Removal is authorized by 28 U.S.C. §§ 1332, 1441, and 1446.
- (c) There is complete diversity of all parties.
- (d) The consent to removal of all required defendants has been obtained.
- (e) The amount in controversy satisfies the necessary jurisdictional requirements.

24. Removal is properly made to the United States District Court for the District of Montana under 28 U.S.C. § 1441(a) because Yellowstone County, where this action is currently pending, is within the District of Montana. *See* 28 U.S.C. § 106.

25. Pursuant to 28 U.S.C. § 1446(a), copies of all papers served on defendants in the state court action at the time of removal are attached hereto and

incorporated herein as Exhibit C. The attachment consists of a copy of the following:

- (a) Service of Process Summary Transmittal Form;
- (b) Summons to defendant Cabela's Wholesale, Inc.;
- (c) Amended Complaint;
- (d) Plaintiff's First Discovery Requests to Cabela's Wholesale, Inc.; and
- (e) Defendants Star Targets, Justin Hardy, and TLD Industries, LLC's Answer, Jury Demand, and Third-Party Complaint.

26. Cabela's will file written notice of the filing of this Notice of Removal with the Clerk of the Montana Thirteenth Judicial District Court of Yellowstone County, Montana concurrently with the filing of this Notice of Removal and will serve the same on Plaintiff pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, by this Notice of Removal, defendant Cabela's Wholesale, Inc. hereby removes this action from the Montana Thirteenth Judicial District Court of Yellowstone County, Montana, and requests that this action proceed as properly removed to this Court.

Dated: July 9, 2014

/s/ Thomas T. Bassett

Thomas T. Bassett (MT 3661)

tom.bassett@klgates.com

K&L Gates LLP

618 West Riverside Avenue, Suite 300

Spokane, WA 99201-5102

Telephone: (509) 241-1538

Facsimile: (509) 232-2117

Of Counsel:
Jared S. Hawk (PA 92959)
jared.hawk@klgates.com
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222-2613
Telephone: (412) 355-6348
Facsimile: (412) 355-6501

Kenn Brotman (IL 6236771)
kenn.brotman@klgates.com
K&L Gates LLP
70 West Madison Street, Suite 3100
Chicago, IL 60602-4207
Telephone: (312) 807-4277
Facsimile: (312) 345-9960

Counsel for defendants Cabela's
Incorporated and Cabela's Wholesale, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Donald D. Sommerfeld
Towe, Ball, Mackey, Sommerfeld & Turner, PLLP
P.O. Box 30457
Billings, MT 59107
(*Attorney for plaintiff Casey Bendure*)

Paul C. Collins
Crowley Fleck PLLP
500 Transwestern Plaza II
490 North 31st Street
P.O. Box 2529
Billings, MT 59103-2529
(*Attorney for Defendants Star Targets, Justin Hardy, and TLD Industries, LLC*)

/s/ Thomas T. Bassett

Thomas T. Bassett (MT 3661)
tom.bassett@klgates.com
K&L Gates LLP
618 West Riverside Avenue, Suite 300
Spokane, WA 99201-5102
Telephone: (509) 241-1538
Facsimile: (509) 232-2117